

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALFONSO HERNANDEZ,

Plaintiff,

v.

Civ. No. 14-964 KG/SCY

ANDY FITZGERALD,

Defendant.

**ORDER REGARDING DEFENDANT'S OBJECTION
TO PLAINTIFF'S AMENDED DEPOSITION DESIGNATIONS**

This matter is before the Court on “Defendant’s Objection To Plaintiff’s Untimely Amended Deposition Designation,” filed May 22, 2019 (Doc. 267). On May 15, both parties filed Deposition Designations for witness Michael Herrick, who will not be present at trial (Docs. 254 & 256). On May 17, both parties filed objections to each other’s designations (Docs. 258 & 259).¹ The Court held a hearing on the Objections on May 20, 2019 at 1:30 pm. The Court issued line-by-line rulings on the designations and objections at the hearing (Doc. 261), with reasons stated on the record for each, and memorialized those rulings on May 21, 2019 in its Order Regarding Objections to Deposition Designations (Doc. 263). In that Order, the Court ruled:

At the hearing on May 20, 2019, Plaintiff represented that he may not call Mr. Herrick at trial in light of the Court’s rulings as set forth above. Therefore, the parties shall confer and if necessary, submit competing transcripts by 5:00 pm on Wednesday, May 22, 2019. The parties are not required to prepare the corresponding video designations. If Plaintiff advises that he will not call Mr. Herrick at trial, Defendant’s counsel shall submit a transcript for review without the impeachment evidence as described above.

¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to the undersigned to conduct proceedings on “Objections to deposition designations of Michael Herrick of both parties” (Doc. 255).

(Doc. 261 at 5).

On May 22 before 5 pm, Plaintiff filed his Amended Notice Of Designation Of Use Of Deposition Testimony At Trial (Doc. 266). In that Amended Notice, it appears that Plaintiff simply removed the lines that were originally designated by Plaintiff on May 15 but excluded by the Court in its Order. Plaintiff also added lines 106:1-6, volume II, which were not originally designated by Plaintiff, but were designated by Defendant and admitted by the Court without objection (Doc. 263 at 5).

Also on May 22, Defendant filed his “Objection To Plaintiff’s Untimely Amended Deposition Designation” (Doc. 267), arguing that Plaintiff’s Amended Designations are untimely and prejudicial. Upon review, it appears to the Court that Plaintiff complied with the Court’s order to provide notice by 5 pm on May 22 on whether Plaintiff will call Mr. Herrick at trial. If Defendant believes Plaintiff has added designations excluded by the Court or withdrawn designations admitted by the Court, then Defendant should specifically set out those portions for the Court’s review by 5 pm today, May 23, 2019. If Defendant does not do so, Defendant’s Objections are OVERRULED.

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE